PP

v.

MURUGAN ARUMUGAM

HIGH COURT MALAYA, SHAH ALAM
MOHD YAZID MUSTAFA J
[CRIMINAL CASE NO: MTJ4-45B-170-2009]
5 OCTOBER 2010

CRIMINAL LAW: *Penal Code - Section 302 - Murder - Prima facie case - Whether established - Victim viciously beaten up and locked in toilet for two days without food and water - Whether victim's dying declaration and circumstantial evidence pointed to accused as person who caused victim's injuries - Evidence of accused's wife that victim was beaten by accused - Whether intention to cause victim's death proven - Defence merely an afterthought and a concocted story to deflect blame - Whether charge proven beyond reasonable doubt*

CRIMINAL PROCEDURE: *Mens rea - Murder - Whether proven - Whether intention or mens rea a matter of inference - Whether intention may be assessed from nature and extent of victim's injuries and weapons used to cause victim's death*

EVIDENCE: *Dying declaration - Admissibility - Victim's s. 112 statement recorded when victim was conscious and lucid - Victim identifying accused as her attacker - Victim's statement consistent with her earlier statements*

The accused was charged with the offence of having murdered one Muntik (victim), an offence of murder under s. 300 of the Penal Code. The victim was found in one of the toilets in the accused's house. The toilet was bolted from outside. When the police arrived at the scene after receiving information, SP4 (a police officer) found the victim lying half clothed on the toilet floor. The victim appeared to be physically weak. The medical assistant (SP6) testified that the victim was awake and lucid, able to reply to the queries put forth by SP6 and able to lift up her arm but had complained of being in pain. The victim was bald, had bruises on her face and hand, one of her eyes was shut and her leg was injured. The victim had informed SP6 that she was working with the accused and his wife for the past 2-3 months. During the ambulance ride to the hospital, the victim informed SP6 that her 'employer' had beaten her. The victim was

A diagnosed as sustaining spinal injuries. The victim had told the attending doctor (SP39) that her male Indian employer *ie,* the accused had repeatedly hit her with a wooden stick; punched and kicked her in the stomach, back and face; her head was shaved by the accused; she was hit on the leg with an iron rod and B thrown hot water by the accused and locked inside a toilet for two days without any food. SP39 stated that the victim was aware of her surroundings, able to answer the questions and was not sedated during the interview although the victim was experiencing hypovolemic shock. Despite treatment, the victim died C on 26 October 2009. SP20, SP22, SP23, SP29 and SP30 testified that the victim was first seen in the house of the accused in early September 2009 and at the time, the victim was physically normal. SP22 testified that one day before the Deepavali celebrations on 12 October 2009, she had seen the victim limping while carrying D a rubbish bag. The victim's head was shaved; her right leg was wrapped with a piece of cloth and plastic and the right side of the face was swollen and blackened. SP23 identified the wooden broomstick which the accused had used to beat the victim. SP30 had, on one or two occasions, seen the accused shout and kick E the victim's legs. SP21 (accused's wife) testified that it was the accused who had shaved off the victim's hair; that the accused had admitted to hitting the victim on the face and that the accused had put the victim in the toilet. The accused claimed that the victim had come to his house because she was escaping from F her abusive previous Chinese employer. The accused allowed her to stay in his house because he pitied her and was merely trying to assist her in returning to Indonesia. According to the accused, at the time the victim arrived at his house, the victim's face was bruised and she was weak and limping due to an ulcer on her leg. G The victim's head was full of lice thus the accused had shaved off her hair. The accused admitted to having had scolded and yelled at the victim for being too slow in performing her chores. The accused stated that while cleaning the front porch, the victim had fallen onto her back because the floor was soapy and he had told H her to go into the toilet to clean the ulcer on her leg.

Held (convicting the accused of the charge of murder and sentencing him to be hanged by the neck until death):

I **(1)** The prosecution had succeeded to *prima facie* prove that the accused was the person that had inflicted the injuries on the victim that subsequently led to her death on 26 October

2009. In arriving at this finding, the court relied on the victim's dying declaration and the circumstantial evidence. (para 24)

(2) The victim's dying declaration pointed to the accused as the person who had caused the older injuries on the victim and locked her in the toilet for two days. The victim's s. 112 statement recorded by SP14 on 21 October 2009 was made when the victim was conscious and lucid in identifying the accused as her attacker and was a repetition of her statements to SP14 on 20 October 2009. The victim was conscious throughout her admission at the hospital from 20 October 2009 until her death on 26 October 2009 despite being on intensive medication and breathing with the assistance of a breathing machine. The evidence of the witnesses to the victim's dying declaration was consistent in establishing the fact that the victim was conscious and aware of her surroundings when she made the dying declaration. (paras 25 & 26)

(3) There was evidence that the accused had admitted, on 20 October 2009 and 21 October 2009, to hitting the victim to SP2. The evidence regarding the admission of the accused taken with the surrounding circumstantial evidence *viz*, the discovery of the victim at the crime scene led to the conclusion that the victim was assaulted and left in the toilet by the accused. There was also evidence from the wife of the accused, SP21, that the victim was beaten and locked in the toilet by the accused. (paras 33 & 34)

(4) Intention or *mens rea* is a matter of inference as established by the Federal Court in *Tham Kai Yau & Ors. v. PP*. The factors which could assist in assessing the intention of the accused are the nature and extent of the victim's injuries and the weapon or weapons used to cause the victim's death. The victim's death was directly related to the injuries inflicted upon her by the accused. Her worsening condition was directly related to the act of the accused in leaving her in her injured condition in the toilet without food and water for two days. The victim's cause of death could not have occurred as it did if not for the injuries which came about from the actions of the accused. The accused therefore had the intention to cause the victim's death when he viciously attacked the victim. (para 37)

(5) The accused's defence was merely an afterthought and a concocted story to deflect blame from him and on to the victim's former employer. His overall testimony contained allegations which were implausible, contradictory and inconsistent with the prosecution evidence. The accused had failed to raise any reasonable doubt to rebut the fact that the victim was injured by himself. The prosecution succeeded in proving beyond any reasonable doubt the charge of murder under s. 300 of the Penal Code. (para 48)

Case(s) referred to:
Balachandran v. PP [2005] 1 CLJ 85 FC ***(refd)***
Chan Kwee Fong v. PP [2010] 3 CLJ 671 CA ***(refd)***
Dato' Mokhtar Hashim & Anor v. PP [1983] 2 CLJ 10; [1983] CLJ (Rep) 101 FC ***(refd)***
Idris v. PP [1960] 1 LNS 40 HC ***(refd)***
Ismail UK Abdul Rahman v. PP [1974] 1 LNS 53 HC ***(refd)***
PP v. Datuk Hj Harun Hj Idris (No 2) [1976] 1 LNS 97 HC ***(refd)***
PP v. Ling Tee Huah [1980] 1 LNS 212 ***(refd)***
PP v. Nomezam Apandy Abu Hassan (No 2) [2008] 7 CLJ 168 HC ***(refd)***
PP v. Visuvanathan [1977] 1 LNS 103 HC ***(refd)***
Sainal Abidin Mading v. PP [1999] 4 CLJ 215 CA ***(refd)***
Seraman A Adipan v. PP [2009] 5 CLJ 123 CA ***(refd)***
Tham Kai Yau & Ors v. PP [1976] 1 LNS 159 FC ***(refd)***
Yeap Boon Hai v. PP [2010] 2 CLJ 405 FC ***(refd)***

Legislation referred to:
Criminal Procedure Code, s. 112
Penal Code, ss. 299, 300, 302

For the prosecution - Idham Abdul Ghani (Mohd Dusuki Mokhtar & Siti Fatimah with him); DPP, AG's Chambers
For the accused - V Rajehgopal; M/s Rama Vellu & Assocs
Watching brief for the Indonesian Government - T Vijay; M/s T Vijay & Co

Reported by Amutha Suppayah

JUDGMENT

Mohd Yazid Mustafa J:

[1] On 19 July 2010, 1 had found the accused guilty of and convicted the accused for the offence of murder under s. 300 of the Penal Code which is punishable under s. 302 of the same and sentenced the accused to be hung by the neck until death. The charge against the accused reads as follows:

Bahawa kamu di antara 18 Oktober 2009 hingga 20 Oktober 2009 di No. 11 Jalan Dato' Yusof Shahbudin 6, Taman Sentosa di dalam Daerah Klang di dalam Negeri Selangor Darul Ehsan, telah membunuh Muntik (No. Pasport: AK 072947) dan oleh yang demikian kamu telah melakukan kesalahan yang boleh dihukum di bawah Seksyen 302 Kanun Keseksaan.

Facts Of The Case

[2] The prosecution has called 50 witnesses to testify against the accused. The facts of the case that is obtained from the prosecution witnesses are as follows.

Discovery Of The Victim On 20 October 2009 Until Her Death On 26 October 2009

[3] At about 11.30am on 20 October 2009, SP3 had visited the wife of the accused (SP21) at the latter's house. SP3 had wanted to use one of the two toilets in the house. SP21 directed SP3 to a toilet stating that the other was broken. SP21's toddler son pointed to the "broken" toilet and uttered the words 'akak, akak, akak'. The "broken" toilet was bolted from outside. SP3 had opened the bolt and looked inside. SP3 saw the victim. The victim was bald, tied up and appeared to be asleep. SP3 left the house immediately. About 5pm, SP3 contacted a lawyer, SP2. SP2 and his pupil were brought to the house of the accused by SP3 about 5.45pm to 6pm. After being shown the house, SP2 had driven SP3 back to the 99 supermarket before proceeding to the police station to lodge a report. SP2's statement was recorded by SP14 (Inspector Mohd Azan bin Radzali) at 7pm. SP2 visited the victim at the Klang General Hospital where he observed that the victim's face was swollen, her head was shaved, there was a gaping wound below the right knee, her left arm was swollen and there were bruises all over her body. The victim identified the accused as her attacker to SP2. About 11.30pm on 20 October 2009, the accused had contacted SP2 seeking for assistance and advice. The accused was acquainted with SP2 because the latter had previously been his defence counsel. SP2 had advised the accused to surrender and cooperate with the police in order to obtain the release of his wife, SP21. The accused had informed SP2 that he had hit the victim because she was disobedient and had beaten up his son. On 21 October 2009, the accused met with SP2 at the Klang police station and again admitted to hitting the victim.

[4] The first police officer on the scene on 20 October 2009 was Corporal Yusoff Ahmad, SP4 and four other police officers *viz*, Constables Afizan Mat Salim (SP5), Najib, Safuan and Zubaidi. The three police constables to proceed to the back of the house while SP4 headed towards the kitchen. There was a strong stench permeating inside the house. SP4 had first opened the first toilet which was empty. SP4 then opened the bolted toilet and discovered it was stuck. SP4 proceeded to slowly push the toilet door until he saw the victim lying half clothed on the toilet floor. The victim's leg was blocking the toilet door. The victim's head was facing the toilet bowl and both legs were folded inwards. The lighting inside the toilet was dim. The victim appeared to be physically weak. The ambulance arrived after 20-30 minutes after being called by SP4. SP4 testified that during the two hours he was at the crime scene, the police did not confiscate any items. SP4 was informed by SP21 that the accused had caused the victim's injuries. The above testimony of SP4 is corroborated by Constable Afizan Mat Salim, SP5 and Inspector Mohamad Zuwairi, SP12. SP12 was informed by SP21 that the accused had caused the victim's injuries. SP12 had examined the toddler son of SP21 and discovered that there were no marks to indicate the child was beaten or had fallen.

[5] The paramedics had arrived about 20 minutes after the arrival of the police at the crime scene. The medical assistant, SP6 testified that the victim's legs were folded inwards; the victim was awake and lucid, able to reply to the queries put forth by SP6 and able to lift up her arm but had complained of being in pain. The victim was bald, had bruises on her face and hand, one of her eyes was shut and her leg was injured. The victim had informed SP6 that she was working with the accused and his wife for the past 2-3 months. During the ambulance ride to the hospital, the victim informed SP6 that her 'employer' had beaten her.

[6] Upon arrival at the Klang hospital, the victim was sent to the semi critical zone (yellow zone) where she was attended to by Dr Shujahtaa MP Rajoo (SP39) and Dr Che Ros. The victim's blood pressure was low and the pulse rate and breathing were fast. SP39 had observed that the victim had bruises all over her hands, face and legs. The victim was transferred to the critical zone (red zone) for immediate treatment. The victim was lucid, aware of her surroundings and able to answer questions although weak and dehydrated. The victim was diagnosed as sustaining

spinal injuries because she could not move or feel sensation in her legs. Apart from these injuries, the other injuries observed by SP39 were:

i. both eyes were bruised whereby the left eye could not be opened while the right eye could be slightly opened;

ii. bruises and swelling in her left hand - could be lifted up;

iii. bruises on the right hand;

iv. a wound in her elbow;

v. three bruises at the right side of her right knee;

vi. an open wound on her right knee (1.5 x 2.5 cm);

vii. an open wound on the anterior of the right leg (8 cm x 4.5 cm) that was inflamed, reddish, and contained pus and dead tissue;

vii. a bruise in the middle of the left leg; a bruise at the sole of the left foot;

ix. swollen bruise at the victim's backbone (thoracolumbar region); and

x. swollen bruise at the victim's buttocks and the side of her right thigh.

[7] The victim had told SP39 that her male Indian employer ie, the accused had repeatedly hit her with a wooden stick; punched and kicked her in the stomach, back and face; had worked for the accused for two months; her head was shaved by the accused; she was hit on the leg with an iron rod and thrown hot water by the accused and locked inside a toilet for two days without any food. SP39 stated that the victim was aware of her surroundings, able to answer the questions and was not sedated during the interview although the victim was experiencing hypovolemic shock. SP39 had only contacted the orthopaedic specialist doctor (SP42) about 9.40 - 9.50pm because the victim needed to be stabilized first. Dr Urcilla Jaya, SP43 was present when SP39 interviewed the victim. SP43 had written down the victim's statements in the case note (exh. P74 (1-4)) on the direction of SP39. The notation in exh. P74 was brief and only referred to the victim's employer, and not specifically the accused as her attacker because the main focus at the time was to save the victim's life. The questions put

to the victim had to be repeated before the victim could answer because of the language barrier. The notations in exh. P74 were in English and within inverted commas because the victim spoke in Malay while the notations were written in English. SP43 confirmed that the victim was conscious and aware of her surroundings.

[8] Dr Dinesh a/l Earnest Kunasing (SP42), the orthopaedic medical officer attended to the victim about 9.40pm on 20 October 2009. The victim was alert and conscious of her surroundings although she was breathing through an oxygen mask. The victim was given antibiotics and intravenous fluids to treat her injuries and dehydration. SP42 was informed by the victim that she had not eaten for two days and that the accused had assaulted her. SP42 observed the following injuries on the victim when he examined and treated her:

i. dislocated and fractured spinal cord at the T12 bone;

ii. infected wound on the right leg with the bone partially exposed;

iii. fractured right hand wrist;

iv. the blue and black marks around the eyes;

v. swollen left eye - almost shut;

vi. swelling and deformed spinal cord; and

vii. fractured thoroacolumbar at the upper lower region.

[9] The victim was referred to another orthopaedic specialist Dr Chang Kok Chun, SP49. SP49 testified that he had treated and observed the victim an average of twice per day since her admission on 20 October 2009 until her death on 26 October 2009. SP49 did not conduct any MRI on the victim because her general condition did not permit it. The victim was weak and severely dehydrated as a result of food and water deprivation before her admission to the hospital. SP49 obtained a diagnosis of the victim's condition and extent of the injuries through x-ray and CT scan. SP49 confirmed that the victim was paralysed from the waist down. In his medical opinion SP49 stated that the victim's injuries were caused by a violent blunt force trauma.

[10] In his opinion, the iron handle of the three pronged spear (exh. P28A) could cause the blunt trauma while forceful kicking and punching could cause the bruising on the victim's face, upper and lower limbs of the body. SP49 testified that the injuries sustained by the victim had occurred within a few days prior to her admission to the hospital on 20 October 2009. The victim's body was deteriorating because of her injuries and poor general condition despite intensive treatment and medication. The anaesthesiologist Dr Noraini Sangit, SP40 who had attended to the victim on 26 October 2009 testified that the victim was conscious and able to answer questions. The victim's blood pressure and heart rate were low. The victim's heart beat had stopped about 9.30am on 26 October 2009 and was given CPR for 30 minutes. The victim was proclaimed dead at 10.10am. The victim was unable to be resuscitated because she was in extreme critical condition and had sustained irreversible damage to her internal organs. SP40's testimony is corroborated by Dr Faezah Haji Shaari, SP41 who had also attended to the victim on 26 October 2009.

The Investigation

[11] Inspector Mohd Azan Radzali (SP14) had visited the victim in the hospital at 8pm on 20 October 2009. The victim identified the accused as her assailant. The victim informed SP14 that she was beaten on her legs with an iron rod; her hands were beaten by a wooden broom; was locked up for two days and kicked and punched all over her body. The victim's s. 112 statement (exh. P78) was recorded by SP14 on 21 October 2009. On that date, the victim was breathing through a breathing machine and was very weak. Dr Norliza Ibrahim (SP36) had lifted the breathing mask to enable the victim to speak. The victim repeated that her employer ie, the accused had beaten her with an iron rod and had locked her up in the toilet for two days. The exact word used by the victim was 'bapak' and SP14 then changed it to "employer" in his notation. Exhibit P78 was not signed by the victim because her hand was fractured.

[12] SP14 had received the victim's blood sample from SP36 in a sealed and marked envelope (exh. P33). SP14 had safely kept exh. P33 in a vault. On 26 October 2009, SP14 visited the crime scene at 6.30pm with Chief Inspector Azman bin Tubin (SP15), ASP Zainol Hisham bin Abu (SP27) and the Bukit Aman Forensic team. SP27 and his forensic team had confiscated ten items from

A the crime scene. The ten items (exhs. P17, P18, P19, P20, P21A, P22, P23, P24, P25, P26) were wrapped, sealed and marked and handed to ASP Chua Hang Loun (SP35). On 28 October 2009, SP35 forwarded 18 items to P Revathi a/p Perumal (SP33) for analysis at the Petaling Jaya Chemistry Department. ASP Ahmad
B bin Tarmudi (SP50) took over the investigation on 26 October 2009. The Hemoccult® SENSA test and the Lightning® Luminol test of the crime scene conducted by the crime scene analyst (SP27) on 26 October 2009 detected positive trace amount of blood. However, similar tests at the victim's former employer's
C house at No. 2 Jalan Dato' Shahbudin 5 Taman Sentosa 41200 Klang on 28 October 2009 did not recover any blood trace. The investigation at No. 2 Jalan Dato' Shahbudin 5 Taman Sentosa Klang only confirmed that the victim's former employer, Puah Hooi Sueew (SP11) lives with an elderly mother and six items *viz*, from
D the bedroom in which the victim formerly slept in were confiscated by SP27 for analysis.

Testimony Of Public Witnesses

E **[13]** SP20, SP22, SP23, SP29 and SP30 testified that the victim was first seen in the house of the accused in early September 2009 and at the time, the victim was physically normal. SP22 testified that one day before the Deepavali celebrations on 12 October 2009, she had seen the victim limping (jalan terhenjut-
F henjut) while carrying a rubbish bag. The victim's head was shaved; her right leg was wrapped with a piece of cloth and plastic and the right side of the face was swollen and blackened. SP23 identified exh. P31A as the wooden broomstick which the accused had used to beat the victim. SP30 had, on one or two
G occasions, seen the accused shout and kick the victim's legs. SP30 had last seen the victim with a swollen face 1 week before the Deepavali celebrations.

[14] The victim's former employer, SP11 testified that the victim was hired about 2004 in order to care for SP11's ageing mother.
H SP11 had never abused the victim during her employment. In September 2009, the victim had run away from SP11's house. SP11's testimony is corroborated by SP29 who testified that he had occasionally seen the victim working at SP11's house and that the victim was physically fit during her employment with
I SP11. The prosecution has also called the wife of the accused, Vanitha a/p David to testify as prosecution witness SP21. SP21 identified exhs. P31A, P30A, P32A, P29A and P27A as belonging

to her. SP21 testified that it was the accused who had shaved off the victim's hair; that the accused had admitted to hitting the victim on the face and that the accused had put the victim in the toilet.

The Evidence Of The Forensic Pathologist

[15] SP36 performed the post mortem on the victim on 26 October 2009 and was the attending physician who had treated the victim on three separate occasions prior to the victim's death ie, on 21 October 2009, 22 October 2009 and 23 October 2009. SP36 confirmed that the victim had sustained multiple injuries prior to her death *viz*, abrasions and bruises on her head, neck and frontal right part of her torso; abrasions, bruises and ulcers on her right leg; abrasions and bruises on the frontal left part of her torso and left hand; abrasions, bruises and superficial tear on her left leg; purplish bruise, abrasions and multiple fracture on the spinal cord (from henceforth to be named as 'the older injuries') (See notes of proceedings at pp. 459 to 464 for a full detail of the older injuries). SP36 explained that the older injuries were on the victim's body as at the date of admission to the hospital on 20 October 2009.[1] SP36 testified that the victim was conscious of her surroundings during the medical examinations on 21 October 2009.

[16] During the post mortem on the victim on 26 October 2009, SP36 discovered recent injuries on the victim's body that had appeared during the three days prior to the victim's death. The victim had suffered complications and disease due to the older injuries. Such complications and disease resulted in the emergence or appearance of the recent injuries. The older injuries indicated that the victim was repeatedly beaten with violent blows from a blunt and hard weapon or weapons and was inflicted with violent punches and kicks. The older injuries are not caused by falling down. The older injuries showed are inflicted within a span of a few days to a few weeks. The exact time frame for the bruises could not be estimated because the bruises were inflicted within a few days apart. The spinal injuries were estimated to have been inflicted within a few days to a week prior to the victim's death. The injury to the victim's right leg was an old wound that was inflicted more than 48 hours prior to her death.

[17] The victim's cause of death is spinal injury by blunt force trauma, bacterial infection and septicemia of the right leg. The injury to the spinal cord had paralysed the victim from the waist

down (T12). The victim's paralysis resulted in complications of the blood flow in the skin and intestines. Such complications in the blood flow resulted in the formation of pressure ulcers (bedsores or lesions) that caused inflammation on the victim's right leg that led to various complications *viz*, protracted healing of the wounds, bacterial infection and blood flow complications. There was necrosis (tissue death) of the small intestine caused by blood clotting due to the blood flow complications. The inflamed ulcer on the victim's right leg had also caused bacterial infection. The first actual injury and the extent and number of beatings on the right leg could not be determined because the wound was old and septic. The injury on the right leg was not fatal but it could cause fatal complications. Overall, the treatment received by the victim at the hospital was ineffective and unable to assist the victim to heal because of the injuries to her spinal cord and the fact that the victim had bacterial infection. The combination of the various abnormalities appearing from her injuries caused inflammation of her body and major internal organ dysfunction which led to her death. The victim had a very slim chance of survival due to the complications from her injuries *viz*, the paralysis, bacterial infection in the blood (septicemia), necrosis (tissue death) of the small intestine and complications to the blood flow.

[18] The fracture to the victim's spinal cord would ordinarily cause death but death would not be instantaneous. Death would be the resultant outcome for spinal cord fracture upon the emergence of certain complications. The probability of death for a victim of spinal cord fracture is higher especially if treatment is delayed. The ulcer on the right leg could ordinarily cause death but death is not immediate. A victim with such an ulcer would die because of the arising complications. An untreated ulcer or wound is easily infected with bacteria and the infection, if not immediately treated, would result in the entire body succumbing to bacterial infection. SP36 confirmed that on 21 October 2009 the victim was able to communicate despite breathing with the assistance of an oxygen mask. On 22 October 2009 and 23 October 2009, the victim was breathing with the assistance of a ventilator.

[19] In her expert opinion, the items *viz* the mop (exh. P21A), the wooden broomstick (exh. P31A), the long iron handle of the three pronged spear (exh. P29A), the wooden stick (exh. P27A), the piece of rattan (exh. P28A), the black coloured drum-beater (exh. P26A), the brown coloured plastic pipe (exh. P30A) and the coconut rib-broom (penyapu lidi) (exh. P32A) could be the weapon

or weapons used to cause the older injuries because all the items are blunt and hard instruments. SP36 had sent the victim's tissue block and bone specimen to Dr Mohd Suhani Mohd Nor, SP46 on 1 November 2009 for a histology report. On 1 May 2010, SP36 obtained the histology forensic report dated 31 December 2009 from SP46 (the histology report is an attachment in the post mortem report exh. P68). SP46 testified that the tissue sample of the victim's heart does not indicate any signs of a heart attack. The victim was suffering from atherosclerosis[2] which is not caused by complications from the victim's injuries. Nonetheless, the forensic pathologist attending to the victim's post mortem is still the point of reference as to the cause of death. SP36 and SP46 had referred the victim's case to Dr Jessie Hui, SP48. SP48 conducted a microscopic analysis of the spinal cord and brain tissue. The examination on the tissue showed that there was spinal cord injury that was inflicted between a few days to one week prior to the victim's death.

Arguments Of The Deputy Public Prosecutor

[20] The victim had died because of her injuries as testified by SP36, the forensic pathologist. The injuries which led to the victim's death were caused by the act of the accused. The fact that it was the accused that had caused the victim's injuries is proven by circumstantial evidence *viz*, from the testimonies of the prosecution witnesses, SP20, SP22, SP23, SP29, SP30 and SP21. Apart from the circumstantial evidence, there is the dying declaration of the victim in identifying the accused as her attacker. The accused had the intention to cause death to the victim by his actions. This is arrived at from an assessment of the nature and extent of the victim's injuries as testified by SP36. *Prima facie*, the prosecution has proven a case of murder against the accused and the accused should be called to enter his defence.

Arguments And Reply By The Defence Counsel

[21] The testimony of the 50 prosecution witnesses does not support a finding of *prima facie* proof against the accused on the charge of murder. As for the cause of death, there is no evidence whatsoever before the court to link the cause of the ulcer on the victim's right leg to the act of the accused. The testimony of SP6 ie, the hospital medical assistant confirms that the wound on the victim's right leg was an old wound with traces of an old ulcer. This is evidence that there are two conflicting versions before the court and the court has to prefer the inference which is in favour of the accused.

[22] There is no evidence to prove that the spinal injury was caused between 18 October 2009 and 20 October 2009 as per the charge sheet and could be linked to the act of the accused and as to how the victim was injured on her face. The marks on the victim's face are old wounds. There is no medical evidence to show when the victim had become paralysed from the waist below. There is medical expert testimony to establish that the victim was suffering from severe heart disease that was not related to her injuries. There no fingerprint analysis done by the investigation officer. The failure of the prosecution to call the mother of the accused, Vasantha Rani to corroborate the testimony of SP21 creates doubt. There is no evidence as to why the victim ran away from the first employer's (SP11) house. Exhibit P74 (secondary survey) is full of discrepancies. Exhibit P78 is a prejudicial comment because it was recorded by the investigation officer, SP14. It is argued that the difficulty in obtaining the history of the victim infers that at the time the victim uttered the dying declaration, she was not having clarity of mind. The dying declaration made to SP2, SP6, SP14, SP39, SP42 and SP43 is contradictory, not precise and not related to her cause of death. Overall, the prosecution evidence is incredible. The prosecution has failed to establish a *prima facie* case against the accused for the charge of murder.

Findings At The End Of The Prosecution Case

[23] The victim has been identified as one Muntik binti Bani of Indonesian nationality. The victim's death was at 10.10am on 26 October 2009 as stated in the post mortem report (exh. P68). The victim's cause of death is spinal injury due to blunt force trauma with septicemia due to right leg ulcer as testified by the forensic pathologist SP36 and stated in exh. P68.

Whether The Accused Had The Actus Reus

[24] The court finds that the prosecution has succeeded to *prima facie* prove that the accused is the person that had inflicted the injuries on the victim that subsequently led to her death on 26 October 2009. In arriving at this finding, the court is relying on the victim's dying declaration and the circumstantial evidence.

The Dying Declaration

[25] The victim's dying declaration as testified to by SP2, SP6, SP14, SP39, SP43 and SP42 similarly point to the accused as the person who had caused the older injuries on the victim and

locked her in the toilet for two days. The principles for the application of a dying declaration is established in the High Court decision of *PP v. Nomezam Apandy Abu Hassan (No. 2)* [2008] 7 CLJ 168 at 187-188, the learned High Court judge held that:

> As a general rule, the law of evidence requires the best evidence to be adduced. Exceptions do arise in order to allow the admissibility of hearsay evidence: see eg *PP v. Mohamad Fairus bin Omar* [1997] 5 MLJ 57 (HC) (p. 303, Evidence, Practice and Procedure, 2000 by Augustine Paul (now FCJ). The rationale for admitting a dying declaration is that "where a witness is dead, it may be better to admit evidence of what he said that to deprive the court of all proof. Section 32(1)(a) allows the admissibility of a dying declaration in criminal as well as civil cases, as expressly stated under the terms "whatever may be the nature of the proceeding in which the cause of death comes into question. A dying declaration under s. 32(1)(a) is relevant whether the person who made it was or was not, at the time when it was made, under expectation of death. Under s. 32(1)(a), the maker of a statement who is dead and the statement in the form of a dying declaration as to the cause of his death or circumstances of the transaction which resulted in his death are relevant and admissible. The circumstances must have some proximate relation to the actual occurrence. The transaction must relate to a set of facts pertaining to the death of the victim such as the time or place of his death or about meeting someone who may be the accused. (emphasis added)

[26] The victim had identified the accused as her attacker on 20 October 2009 to the paramedic SP6, the attending physician SP39, the recording physician SP43, the orthopaedic medical officer SP42, the investigating officer, SP14 and the lawyer, SP2. The victim's statement that the accused had hurt her and locked her in the toilet which was made to SP6 was uttered when she was not under any sedation, fully conscious of her surroundings and aware of the questions put to her. The statements made to SP39 which was recorded by SP43 and SP42 were similarly uttered when the victim was fully conscious and aware of the questions put to her. SP14 and SP2 had visited the victim at the hospital on 20 October 2009 about 8pm and both witnesses confirmed that the victim had clearly identified the accused as her attacker. The statements made by the victim to SP39 as recorded by SP43 in exh. P74 and SP14 also contain facts relating to the specific acts of the accused and the method used to cause her injuries.

[27] The victim's s. 112 statement (exh. P78) recorded by SP14 on 21 October 2009 was also made when the victim was conscious and lucid in identifying the accused as her attacker and was a repetition of her statements to SP14 on 20 October 2009. The testimony of SP14 finds support from the testimony of the attending physician SP36 that the victim was conscious on 21 October 2009 although she was breathing through an oxygen mask. The evidence of SP36 and the two anaesthesiologists, SP40 and SP41 have shown that the victim was conscious throughout her admission at the hospital from 20 October 2009 until her death on 26 October 2009 despite being on intensive medication and breathing with the assistance of a breathing machine. There is therefore no issue regarding the conscious state of the victim at the time she made the dying declaration. At no point during her stay in the hospital was the victim under sedation and unconscious.

[28] The Court of Appeal has held in *Seraman A Adipan v. PP* [2009] 5 CLJ 123 at 140 that:

> We are of the view that the oral and written statements of the deceased have been properly admitted by the learned trial judge. We are unable to accept the appellant's contention that at the time of making the dying declarations the deceased was heavily sedated with painkillers which could impair his thinking process and he could also suffer from 'Korsakoff Syndrome'. It is to be noted that when the deceased made his statement to PW10 he was not referred to PW16 yet and the time there was no evidence to suggest that he had been given morphine-based painkillers. Yet his statement to PW10 and the statements he gave later to the other witnesses are consistent. As such how could it be said that the deceased's thinking process was impaired because of the morphine-based painkillers. The learned trial judge has made a finding of fact that the deceased had the capacity and clarity of mind to remember facts and details. With regard to 'Korsakoff Syndrome' the defence's own witness, DW4, stated that a person could not suffer 'Korsakoff Syndrome' from burns. No question was asked by the defence to PW16 on this during cross-examination. (emphasis added)

[29] The evidence of the witnesses to the victim's dying declaration is consistent in establishing the fact that the victim was conscious and aware of her surroundings when she made the dying declaration. The defence has failed to raise any doubt or shake any of the testimony of the witnesses to the dying declaration in cross examination. The fact is that the victim was conscious and

aware when she identified the accused as her attacker and stated the specific details of the injurious acts inflicted upon her and the methods used by the accused. The facts and circumstances contained in the victim's dying declaration are in proximate relation to the older injuries that caused her death. The victim's dying declaration is relevant in establishing that the accused had caused the older injuries on the victim.

Circumstantial Evidence

[30] The circumstances surrounding the discovery of the victim at the crime scene taken with the testimony of the public witnesses point to one and only one conclusion that it was the accused that had caused the older injuries on the victim and locked her up in the toilet. In assessing the relevant circumstantial evidence, I am bound by the principle in *Dato' Mokhtar Hashim & Anor v. PP* [1983] 2 CLJ 10; [1983] CLJ (Rep) 101 at p. 113, where it was held by the Federal Court that:

> Where circumstantial evidence is the basis of the prosecution case the evidence proved must irresistibly point to one and only one conclusion, the guilt of the accused, but in a case tried - without a jury the failure by the court to expressly state this is not fatal and it would be suffice if it merely says that it is satisfied as to the guilt of the accused beyond reasonable doubt.

[31] The evidence of the orthopedic specialist SP49 establishes that the victim's injuries *viz*, to the spine and the right leg were inflicted within a few days prior to admission in the hospital on 20 October 2009. This fact finds correlation with the evidence of the forensic pathologist SP36 that the older injuries were estimated to have been caused within one week prior to the victim's death on 26 October 2009. The victim was working as a maid and staying in the house of the accused for 2-3 months prior to her death. This fact is testified to by SP6, SP39 and SP14 as told by the victim. The public witnesses SP20, SP22, SP23, SP29 and SP30 have confirmed that the victim was first seen working in the house of the accused in early September 2009 and was physically fit. The testimony of the public witnesses lends credence to the evidence of the victim's former employer SP11 that while in SP11's employ, the victim was not abused.

[32] The reason the victim left SP11's employment is unknown to SP11 because the victim did not give prior notice and had simply left SP11's house. Therefore, this court finds that it is

A unnecessary to examine the reasons for the victim leaving SP11's house as urged by the defence counsel. The pertinent fact is that the victim was not physically impaired when she had left SP11's house in early September 2009 to work for the accused. The victim's physical change *viz*, the bald head, bruised face, injured B leg and limping, as established from the evidence of the public witnesses, took place in October 2009 during her stay and employment as a maid with the accused. Apart from these facts, the most glaring circumstantial evidence is that the victim was discovered lying severely injured on the toilet floor in the house of C the accused on 20 October 2009 by SP4 who was the first police officer on the scene. The fact that the victim's injuries were severe at the time of her discovery is established from the evidence of the attending physician SP39 and the orthopedic doctors SP42 and SP49.

D

[33] There is evidence that the accused had admitted, on 20 October 2009 and 21 October 2009, to hitting the victim to SP2. It is pertinent to note that on 21 October 2009, the accused had surrendered to the police. It could be argued that such E admission and surrender was for the sole purpose of securing the release of SP21 who was originally detained by the police. At the time of surrender, the victim was also still alive although severely injured. Nonetheless, the evidence regarding the admission of the accused taken with the surrounding circumstantial evidence *viz*, F the discovery of the victim at the crime scene leads to the conclusion that the victim was assaulted and left in the toilet by the accused.

[34] There is also evidence from the wife of the accused, SP21 that the victim was beaten and locked in the toilet by the accused. G The prosecution has treated SP21 as a hostile witness due to certain discrepancies between her evidence in court with her earlier statement to the police. The prosecution has however referred to the Federal Court decision in *PP v. Datuk Haji Harun Haji Idris (No. 2)* [1976] 1 LNS 97; [1977] 1 MLJ 15 at p. 19 H where it was held that:

> The question is whether the existence of certain discrepancies is sufficient to destroy their credibility. There is no rule of law that the testimony of a witness must either be believed in its entirety I or not at all. A court is fully competent for good and cogent reasons, to accept one part of the testimony of a witness and to reject the other. It is, therefore, necessary to scrutinize each evidence very carefully as this involves the question of weight to be given to certain evidence in particular circumstances.

[35] Based on this decision, I am accepting SP21's evidence to establish that the victim was beaten and locked in the toilet by the accused. Before concluding on this issue, I would pause to refer to *Idris v. PP* [1960] 1 LNS 40; [1960] 26 MLJ 296 at p. 297 where the Court of Appeal had occasioned to elaborate on the principles governing the assessment of circumstantial evidence where it was held that:

> In other words circumstantial evidence consists of this: that when you look at all the surrounding circumstances, you find such a series of undersigned, unexpected coincidences that, as a reasonable person, you find your judgment is compelled to one conclusion. If the circumstantial evidence is such as to fall short of that standard, if it does not satisfy that test, if it leaves gaps then it is of no use at all.

[36] In applying the legal principles to the facts of this case, I find that the above circumstantial evidence amount to a series of unexpected coincidences that reasonably compels one conclusion ie, that the victim was injured by the accused in the manner and method as declared by the victim in her dying declaration and left in the toilet for two days. To conclude on the ingredient of *actus reus*, I am satisfied that the dying declaration and the circumstantial evidence have *prima facie* establish that the victim was injured by the accused.

Whether The Accused Had The Mens Rea To Murder The Victim

[37] Intention or *mens rea* is a matter of inference[3] as established by the Federal Court in *Tham Kai Yau & Ors v. PP* [1976] 1 LNS 159; [1977] 1 MLJ 174 at 176. The factors which could assist in assessing the intention of the accused are the nature and extent of the victim's injuries[4] and the weapon or weapons used to cause the victim's death[5]. These factors are the determinants as to whether the intention of the accused was to cause the victim's death under s. 300 of the Penal Code or merely bodily injury under s. 299 of the Penal Code[6]. The distinction in assessing the victim's injuries and concluding that the intention is murder rather than culpable homicide is elucidated in *PP v. Visuvanathan* [1977] 1 LNS 103; [1978] 1 MLJ 159. It was decided by the Singapore High Court at p. 160 that:

> In our opinion clauses (a) and (c) of section 300 are meant to cover different acts ie, acts done with different intentions. The cases show that clause (c) is meant to apply in circumstances where the assailant had no intention of causing death but has

A nevertheless intentionally (and not accidentally) inflicted a bodily injury sufficient in the ordinary course of nature to cause death. Under clause (c) once the intention to cause the bodily injury actually found to be present is proved, the rest of the enquiry ceases to be subjective and becomes purely objective and the only
B question is whether, as a matter of purely objective inference, the injury is sufficient in the ordinary course of nature to cause death. It is irrelevant and totally unnecessary to enquire what kind of injury the accused intended to inflict. The crucial question always is, was the injury found to be present intended or accidental. (emphasis added)

C

[38] The forensic pathologist SP36 has testified that the older injuries on the victim were caused by a blunt object or objects and that the items recovered from the crime scene marked as exhs. P21A, P31A, P29A, P27A, P28A, P26A, P30A and P32A
D were possible weapon or weapons as the items were blunt and hard instruments. In her evidence, SP21 has identified exhs. P31A, P30A, P32A, P29A and P27A as items belonging to her and the accused. The attending physician SP39 and the investigating officer SP14 have confirmed the victim's statement to
E them that she was beaten by the accused with a wooden broom and an iron rod apart from being kicked and punched in the face and on the body. I have stated the reasons for accepting the victim's dying declaration. Therefore, I find that the victim was attacked by the accused with one or more of the above exhibits
F apart from being kicked and punched by the accused.

[39] The forensic pathologist SP36 has minutely elucidated the nexus between the victim's death and the older injuries. The victim's death was not instantaneous when the injuries were
G inflicted. The older injuries *viz*, the spinal fracture which paralysed the victim from the waist down had caused blood flow complications that led to the breakdown of the intestines and inability to withstand and combat bacterial infection in the body despite being given intensive medication and treatment. The blood
H flow complications due to the victim's paralysis also resulted in inflammatory ulcers forming on the wound on the right leg. In short, the victim's internal organs and her entire body were deteriorating until she died. SP36 has testified that although the older injuries would not result in instant death, the arising
I complications which stemmed from the older injuries were sufficient in the ordinary course of nature to cause death especially if treatment was delayed. I find that the very fact that the victim

was left without food and water in the toilet for two days after the accused had attacked her is satisfactory evidence that treatment was delayed.

[40] There is forensic evidence that the injuries were inflicted between a few days to one week prior to the victim's death. This establishes that the only place in which the victim could have been injured was at the house of the accused in which she had been working as a maid since September 2009, about two months prior to her death. The victim was not merely inflicted with minor cuts and bruises. The victim's spinal cord was fractured, her hand was fractured and she was inflicted with a large wound below the right knee that became septic. The victim's face was swollen and blackened almost beyond recognition and there were swollen bruises all over her body. There is medical and forensic evidence that the spinal fracture caused her paralysis from the waist down. The victim thus could not have walked or even moved herself into the toilet. The victim could not have possibly sustained the spinal fracture when she was still working for SP11. It is pertinent to note that the victim left SP11's employment in early September 2009 to work in the house of the accused. If the spinal fracture was caused prior to her working for the accused, the victim would have been paralysed and unable to even walk anywhere in September 2009. This is not the proven fact here. There is evidence that in September 2009, the victim was able to move around and perform her household chores. The spinal fracture and septic wound on the right leg was only inflicted on the victim in October 2009 by none other than the accused.

[41] The fact that the victim was lying helpless in a toilet for two days without food and water has certainly left her susceptible to bacterial infection and worsened the numerous and severe injuries on her body. The victim was only admitted to the hospital after the police discovered her at the crime scene. The defence counsel has attempted to persuade this court that the injuries have no nexus whatsoever to the victim's death. I disagree entirely. The victim's death is in no way connected to any medical negligence or accident. I find that the nature and extent of the injuries cannot be attributed to an accident such as falling down but is the direct cause of the intentional actions of the accused. I find that the victim's death is directly related to the injuries inflicted upon her by the accused. Her worsening condition was directly related to the act of the accused in leaving her in her injured condition in the toilet without food and water for two days. The

A victim's cause of death could not have occurred as it did if not for the injuries. The said injuries came about from the actions of the accused. Therefore, the accused is the perpetrator who had intentionally caused the victim's death.

B **[42]** I am satisfied that the victim's death was not a result of any medical negligence. The testimony of the medical personnel which is corroborated by the forensic pathologist proves that all possible measures had been taken to save the victim's life. I am satisfied in accepting the testimony of the medical personnel and the C forensic pathologist as expert evidence regarding the nature of the injuries and its correlation to the victim's death (See the Court of Appeal decision in *Chan Kwee Fong v. PP* [2010] 3 CLJ 671; [2010] 1 MLJ 441 at 460). The extent and nature of the older injuries infer that they were intentionally inflicted by the accused. D The accused did not send the victim for immediate treatment upon injuring her rather he had locked her in a toilet for two days without food and water. This situation had worsened the victim's condition and stunted her ability to recover. The victim's death was thus a practical certainty. In the words of His Lordship Ariffin E Zakaria CJ (Malaya) in *Yeap Boon Hai v. PP* [2010] 2 CLJ 405 at p. 418:

> Applying the above guiding principles to the present case we are of the view that both the High Court and Court of Appeal had come to the right decision having regard to the facts as found by F them. The appellant in this case may have no intention to cause the death or any bodily injury as is likely to cause death to the occupiers of the shop house but judging from the time and manner in which the fire was started, in all circumstances we are satisfied that it is so imminently dangerous to human lives and G that in all probability it will cause death. In the circumstances death approximates to a practical certainty.

[43] Based on these factual findings, I am only able to conclude that the accused had the intention to cause the victim's death when he had viciously attacked the victim.

H

Conclusion

[44] Based on the above reasons and analyses and after according the prosecution evidence to the maximum evaluation, I I find that the prosecution has *prima facie* proven the elements of murder under s. 300 of the Penal Code against the accused. I had thus called the accused to enter his defence. The accused has chosen to given his testimony from the witness stand which is summarized below.

The Defence Case

[45] The accused and his wife are petty traders at a night market. Apart from such business, the accused has a security service business in which he provides security to the entire neighbourhood and collects from the residences a monthly fee. The victim first came to his house in mid-September 2009 because she was escaping from her abusive previous Chinese employer. The accused allowed her to stay in his house because he pitied her and was merely trying to assist her in returning back to Indonesia. The initial arrangement was to allow her to stay for two weeks before her return. The victim's husband had sent some money to the accused for the preparation of her passport. The accused had arranged with an agent. Unfortunately the accused cannot remember the name or company of the foreign maid agency to which he had given the money. At the time the victim arrived at his house, the victim's face was bruised and she was weak and limping due to an ulcer on her leg. The accused offered to report her former employer to the police and send her to a clinic for treatment, both of which the victim refused for fear of being arrested by the police. The victim did not carry any travel documents on her when she came to his house. The victim's head was full of lice thus the accused had shaved off her hair one week before the Deepavali celebrations on 17 October 2009. On 16 October 2009, the accused had scolded and yelled at the accused for being too slow in performing her chores.

[46] The day after the Deepavali celebrations on 18 October 2009, the accused had directed the victim to clean the front porch. While cleaning the front porch, the victim had fallen onto her back because the floor was soapy. The accused was at the front part of his house bathing his son at the garden pipe. The accused had told the victim to go into the toilet to clean the ulcer on her leg. On 19 October 2009, the accused had gone to the Chow Kit market to buy certain items to be sold at the night market. However, the accused ended buying nothing because the goods were too expensive. He returned home about 6-7pm and got ready to go out to meet his Indonesian girlfriend. The accused had spoken to the victim before he went out and she had said that her husband would send the money from Indonesian. The accused returned home on 20 October 2009 to find out that his son was sick. The accused and his wife had brought their son to the clinic. Afterwards, his wife had returned home with his son. The accused did not return home. He had received a call from the

police station stating that his wife was arrested. He had gone home, discovered that his house was locked and slept in the car. He had contacted his lawyer SP2 on 21 October 2009. He had gone to the police station to meet with SP2 to help secure the release of his wife from police custody. The accused admitted that the wooden broom and the iron spear are his belongings.

[47] In cross examination, he admitted that while he and his wife were at their night market business, the victim would take care of their son. He admitted that his house is in a housing area of single storey houses which are built close to one another whereby any loud noises could be heard by the neighbours. He admitted that the goings on within the compound of his house could be easily seen by passing neighbours. Nonetheless, the accused denied ever injuring the victim by beating her with any instruments, kicking and punching her on the face and on the torso.

Findings Of The Court At The End Of The Trial

[48] It is trite law that the accused need only raise a reasonable doubt against the prosecution case. The accused has put forth a version of events which to this court is merely an afterthought and a concocted story to deflect blame from him and on to the victim's former employer. His overall testimony contains allegations which are implausible, contradictory and inconsistent with the prosecution evidence. I am unable to accept the allegation of the accused that the victim was already in a weakened state with bruises on her face and backbone and an ulcer on her leg when she had first come to his house in September 2009. His statement that he had allowed her to stay in his house because he had pitied her and was merely trying to assist her is an outright falsehood. There is evidence from the prosecution witnesses and SP11, the victim's former employer that in September 2009, the victim was physically fit and did not have any marks of bruises on her face or ulcers on her leg. If the testimony of the accused is true as to the condition of the victim when she first came to his house, then accused could have brought her to a hospital for treatment and to the police station to report against her former employer regardless of the victim's fears of being caught by the authorities.

[49] The victim's injuries were not minor. If she was already in such condition when she first came to his house, the reasonable step for the accused would have been to report to the police and send the victim to the hospital. It is pertinent to note that the

accused testified that he did not know of the victim prior to her coming to his house. This raises the question as to why the victim would have sought the help of the accused and not any other neighbour. If the accused is telling the truth as to her physical condition, the victim could not have been able to leave her former employer's house and gone to the house of the accused. The victim had sustained a severe fracture to her backbone and the ulcer on the right leg would have hampered her movement. The fact is that when the victim started working in the house of the accused in September 2009, she was not physically impaired.

[50] According to the accused, the victim had wanted to return to Indonesia and he had received monies from the victim's husband in order to obtain the necessary papers for her return home. The accused also stated that the arrangement was to allow her to stay for two weeks and she was not hired as a maid since she was not paid any wages. If these testimonies are the truth, there was no plausible reason for the victim to have stayed at his house for two months and during her stay, to have been treated as a maid *viz*, by cleaning the house, throwing rubbish and taking care of his son. The fact is that the accused had taken in the victim into his house in September 2009 as a maid.

[51] The most pertinent part of his testimony is the events surrounding the victim's alleged fall on 18 October 2009. I find that this is an implausible explanation as to how the victim had sustained the injury on her back. The forensic pathologist, SP36 testified that the spinal injury was not a result of a fall but a blunt force trauma using blunt instruments such as *inter alia* a wooden broom (exh. P31A) and an iron rod (exh. P29A). The victim's dying declaration is corroborated by the testimony of SP36 in that the victim was injured with these two instruments by the accused. I find that the accused had felt no sympathy towards the victim because he had no qualms in yelling at her when she was slow in performing her chores and despite stating his awareness as to her weakened and injured state, still ordered the victim to clean the front porch on 18 October 2009. In re-examination, the accused explained that the injury on the victim's backbone was already visible since September 2009. If this were true, it is incredible that the accused still entrusted the victim with the care of his son and ordered the victim to do the household chores.

[52] It has to be reminded that the victim was locked in the toilet for two days without any food and water. The accused has remained silent on the fact that the victim was starved for two days but he did state that he had instructed the victim to go into the toilet to clean the festering wound on her leg. The fact is that the toilet was latched from outside and the accused did admit in cross examination that once the latch is secure from outside, the toilet door could not be opened from inside. It is incredible that the victim, suffering from the severe injuries that she had, could walk into the toilet and latch the toilet door from outside thus locking her from inside for two days.

[53] I find that the version of events put forth by the accused are a bare denial and an afterthought which bears no merit worthy for consideration. There is no proof whatsoever to substantiate his version of events. In the words of Yusoff Mohamed J in *PP v. Ling Tee Huah* [1980] 1 LNS 212; [1982] 2 MLJ 324 at p. 326 "A mere denial without other proof to reasonably dislodge the prosecution's evidence is not sufficient." The accused has failed to raise any reasonable doubt to rebut[7] the fact that the victim was injured by himself. The accused has merely testified to a series of concocted and incredible stories aimed at exculpating him from the charge of murder. The fact that the prosecution has not called his mother to corroborate the testimony of his wife, SP21 does not create any break in the chain of evidence. The prosecution evidence is sufficient to establish the elements of murder against the accused. If the accused wishes to substantiate his version of events, it is upon him to call whomsoever including his own mother as a defence witness to corroborate his testimony. The accused has not done so and has merely raised a bare denial and an afterthought testimony for the court's consideration.

Overall Conclusion

[54] The accused has failed to rebut or raise any reasonable doubt against the prosecution evidence against him. The prosecution has therefore succeeded in proving beyond any reasonable doubt the charge of murder under s. 300 of the Penal Code against the accused. The accused is found guilty and convicted of the charge of murder and sentenced to be hanged by the neck until death.

Endnotes:

1. Page 474 of the notes of proceedings

2. Arteriosclerotic vascular disease - artery walls thickens as a result as a result of built-up of fatty materials such of cholesterol - Wikipedia

3. See also the Court of Appeal decision in *Sainal Abidin Mading v. PP* [1999] 4 CLJ 215; [1999] 4 MLJ 497 at p. 505

4. *Ismail UK Abdul Rahman v. PP* [1974] 1 LNS 53; [1974] 2 MLJ 180 at 183

5. *Tham Kai Yau & Ors v. PP* [1976] 1 LNS 159; [1977] 1 MLJ 174 at 176

6. *Ibid*

7. *Balachandran v. PP* [2005] 1 CLJ 85 at 99 where the Federal Court held - "A *prima facie* case is therefore one that sufficient for the accused to be called upon to answer. This in turn means that the evidence adduced must be such that it can be overthrown only by evidence in rebuttal. The result is that the force of the evidence adduced must be such that, if unrebutted, it is sufficient to induce the court to believe in the existence of the facts stated in the charge or to consider its existence so probable that a prudent man ought to act upon the supposition that those facts exist or did happen. On the other hand if a *prima facie* case has not been made out it means that there is no material evidence which can be believed in the sense as described earlier. In order to make a finding either way the court must, at the close of the case for the prosecution, undertake a positive evaluation of the credibility and reliability of all the evidence adduced so as to determine whether the elements of the offence have been established."